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THE PROTECTION OF INTELLECTUAL PROPERTY AND HEALTH POLICY

United States Trade Representative Charlene Barshefsky and Health and Human Services Secretary Donna E. Shalala today announced their intention to develop a cooperative approach on health-related intellectual property matters to ensure that the application of U.S. trade law related to intellectual property remains sufficiently flexible to respond to legitimate public health crisis. In addition, Ambassador Barshefsky announced the removal of the Republic of South Africa from the special 301 “watch list.”

“Recent developments in AIDS treatments give us all hope for helping those already living with HIV and for preventing new infections by interrupting maternal to child transmission. The challenge of making treatments a viable option for those who need them is one that eludes simple answers” said Secretary Shalala. “The United States will continue to work with its partner nations, multilateral organizations, industry, and affected communities to improve access to treatment.”

“A modern patent system helps promote the rapid innovation, development, and commercialization of effective and safe drug therapies - therapies such as those now being deployed in the war against HIV/AIDS” said Ambassador Barshefsky. “Secretary Shalala and I believe that sound public health policy and intellectual property protection are, and must continue to be, mutually supportive.”

Recognizing that health emergencies may require special measures, USTR and HHS are working together to establish a process for analyzing and evaluating health issues that arise in the application of U.S. trade-related intellectual property law and policy. When a foreign government expresses concern that U.S. trade law related to intellectual property significantly impedes its ability to address a health crisis in that country, USTR will seek and give full weight to the advice of HHS regarding the health considerations involved. This process will permit the application of U.S. trade-related intellectual property law to remain sufficiently flexible to react to public health

crisis brought to the attention of USTR. It will also ensure that the minimum standards of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) are respected.

TRIPS provides minimum standards for protecting intellectual property rights. For example, TRIPS requires WTO members to grant time-limited exclusive rights through patents, while permitting use without the authorization of the right holder (e.g., compulsory licensing) under certain limited circumstances and conditions. The provisions of the TRIPS Agreement are being phased-in over time. January 1, 2000, is an important implementation date for developing countries. The Agreement takes special note of the least-developed countries; obligations on these countries generally do not apply until 2006.

Ambassador Barshefsky also announced that she is removing South Africa from the special 301 “watch list.” The recent bilateral understanding developed with South Africa illustrates the complementary nature of sound public health and intellectual property policies. Under the September 17, 1999, understanding, both Governments reaffirmed their shared objective of fully protecting intellectual property rights under the WTO TRIPS Agreement, while addressing the health issues identified by South Africa. South Africa agreed that it would address health needs in a manner that fully protects intellectual property rights. Ambassador Barshefsky took this action as a result of this understanding, as well as other steps South Africa has and is taking to improve further the protection of intellectual property.